## I. Applicable Law and Standard of Review

Senate Bill 1033 was enacted in 1993 and added section 17000.6 [1] to the Welfare and Institutions Code. That section authorizes a county board of supervisors to adopt a general assistance standard of aid below the level established in Welfare and Institutions section 17000.5[2] *if* the Commission on State Mandates finds that meeting the general assistance standard of aid established by section 17000.5 results in significant financial distress. The Commission can make a finding of significant financial distress only if the county has made a compelling case that basic county services, including public safety, cannot be maintained.

Under the original statute, a Commission finding of significant financial distress allowed the county board of supervisors to reduce general assistance benefits for a period of up to 12 months. In 1996, however, the Legislature increased the period to up to 36 months.[3] The Legislature also relieved counties that had already been through the SB 1033 process from the burden of filing a reapplication to obtain the 36-month finding. As long as the Commission approved the county's original application for up to 12 months on or before December 31, 1996, the original finding of significant financial distress was automatically deemed approved for a period of 36 months.[4]

The SB 1033 decision-making process is a two-step process. Within 60 days after receipt of an application, the Commission is required to issue a preliminary decision that the county did or did not make a compelling case that it will incur significant financial distress. A separate hearing is scheduled to adopt a final decision on the application.[5] Welfare and Institutions Code section 17000.6 requires the Commission to hold at least one public hearing on the county's application or reapplication in the county of application. Thus, in the past, the Commission has scheduled the hearing in the county of application as a fact-finding hearing. The process was then returned to Sacramento to schedule the hearings on the preliminary and final decisions.

Finally, the Commission has considered the practical application of the terms "significant financial distress", "compelling case", "basic county services", and "cannot be maintained" used in Welfare and Institutions Code section 17000.6. The Commission's practice[6,] its regulations, and an unpublished court decision addressing these issues are discussed below.

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[1] See Attachment 1.

[2] See Attachment 2.

[3] Statutes 1996, chapter 6, section 6; Statutes 1996, chapter 206, section 32.

[4] Welfare and Institutions Code section 17000.6 also authorizes counties to file a reapplication for significant financial distress with the Commission once the previously approved period of significant financial distress ends. The same standard of proof applies to both an application and a reapplication for a finding of significant financial distress and requires the county to make a compelling case that its basic services, including public safety, cannot be maintained without reducing the general assistance standard of aid.

[5] California Code of Regulations, title 2, section 1186.7; see Attachment 3.

[6] The Commission has considered several SB 1033 applications in the past. The Counties of Alameda (I and II), Butte, Lassen, Los Angeles, Nevada, Sacramento (I and II), Shasta, and Solano filed these

## A. Significant Financial Distress

Welfare and Institutions Code section 17000.6 requires the Commission, upon the filing of an application by a county, to determine if the county is in significant financial distress before the county can reduce the general assistance standard of aid. Section 17000.6 also states that a finding of significant financial distress shall not be made by the Commission unless the county has made a compelling case that basic county services, including public safety, cannot be maintained.

The Commission has found that section 17000.6 implies the duty to consider whether there are alternatives that could remedy the county's basic service deficiencies without reducing general assistance aid benefits. The Commission found, however, that counties should not be required to demonstrate that *all* possible alternatives to general assistance reduction have been explored and implemented. Rather, the county is required to show that a diligent effort has been made to identify and implement reasonable alternatives, and that alternatives deemed reasonable but not implemented have been set aside for sound reasons. The Commission found that proof of all possible alternatives would be exceedingly difficult to offer or for the Commission to validate, and would have a chilling effect on the ability of counties to exercise the relief offered by section 17000.6 in a reasonable fashion.

In addition, the Commission has *not* adopted a "standardized test" for counties to use when proving significant financial distress. Rather, the Commission has considered the following factors when determining if there are reasonable alternatives to the reduction of general assistance:

- Evidence of unmet needs
- Budget forecasts
- County efforts to constrain expenditures
- Flexibility in spending
- Flexibility in resources
- Debt and cash flow

The Commission has determined that it is required to weigh the factors listed above to determine if a compelling case has been made that overall county flexibility in resources is insufficient to address the needs in basic county services. Furthermore, the

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applications. The County of Butte received two previous findings of significant financial distress from the Commission. On October 29, 1996, the County received a 12-month finding of significant financial distress. This finding was statutorily extended to three years and expired on December 28, 1999. On August 27, 1999, the County filed a Reapplication. The Commission concluded in its Statement of Decision that the County made a compelling case that meeting the standards in Welfare and Institutions Code section 17000.5 would result in significant financial distress. Further, there was compelling evidence to grant the finding for a maximum of 36 months. The finding took effect on December 29, 1999, and expired December 28, 2002.

Commission found that it is not required to prioritize county activities. Rather, prioritizing activities is solely within the discretion and purview of the county.

Finally, in the past, opponents to SB 1033 applications have argued that a county is required to demonstrate unmanageable indebtedness evidenced by severe debt or poor credit rating before obtaining a finding of significant financial distress from the Commission. The Commission disagreed with this interpretation and found that the issue is whether the county can demonstrate basic service levels that cannot be maintained *adequately*.

In 1997, the Court of Appeal, Third Appellate District, analyzed the SB 1033 legislation and the Commission's interpretation of section 17000.6 in an unpublished decision, *Goff* v. *Commission on State Mandates*.[7] The *Goff* case, which involved an SB 1033 application filed by the County of Sacramento, was the first such claim ever filed with the Commission.

The court in *Goff* held that Welfare and Institutions Code section 17000.6 does not require a comparative analysis of a particular county's financial health vis-à-vis other counties. Instead the statute authorizes the Commission to make a finding of significant financial distress whenever a county has established by clear and convincing evidence that, absent such a finding, basic county services could not be maintained.[8]

The court also held that factors such as whether the county has maintained a deficit over a period of time, missed a payroll, or failed to make payments to a judgment creditor, are not required before a finding of significant financial distress can be made. Rather, a county's fiscal health is one factor to be considered in judging significant financial distress and, fiscal health alone, is not determinative.[9]

Additionally, the *Goff* court agreed that the Commission must consider alternative revenue enhancements and expenditure reductions when determining if a county is in significant financial distress. But, the court stated that the alternatives must be "viable and practical, not speculative":

> It is not sufficient, for example, to say that a county could raise the requisite amount of funds through a tax levy approved by the electorate. An event that has not yet produced that income and which is uncertain ever to occur cannot form the basis for a finding of financial ability to support these services.[10]

The court also stated that the alternatives are relevant only to the extent that they can cover the projected shortfall giving rise to the claim of significant financial distress:

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[7] *Goff v. Commission on State Mandates* (1997) 69 Cal.Rptr. 276 (*Goff*) [unpublished decision]. See Attachment 4. Pursuant to California Rules of Court, Rule 977, an unpublished decision, while binding on the parties to the action, may not be cited to a court or relied upon as precedent in another court action. However, the Commission may find the informed reasoning of the decision to be instructive.

[8] *Goff, supra,* 69 Cal.Rptr. at page 291.

[9] *Goff, supra,* 69 Cal.Rptr. at page 292.

[10] *Goff, supra,* 69 Cal.Rptr. at page 294.

> For example, the fact that some funds might be found to cover certain county programs is immaterial if that simply reduces a deficit to a smaller, but still unmanageable, size.[11]

**B. Compelling Case**

Welfare and Institutions Code section 17000.6 states that the Commission shall not make a finding of significant financial distress unless the county has made a *compelling case*. The Commission has defined a "compelling case" in its regulations as one "established by clear and convincing evidence."[12]

In past decisions, the Commission has used the description of "clear and convincing evidence" found in the California jury instructions to assess the evidence presented by counties in support of their SB 1033 applications:

> "Clear and convincing" evidence means evidence of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth of the fact(s) for which it is offered as proof. Such evidence requires a higher standard of proof than proof by a preponderance of the evidence.[13]

Consistent with the Commission's regulations, the court in *Goff* found that section 17000.6 "authorizes the Commission to make a finding of 'significant financial distress' whenever a county has established by *clear and convincing evidence* that, absent such a finding, basic county services could not be maintained." (Emphasis added.)[14]

**C. Basic County Services**

Welfare and Institutions Code section 17000.6 states that the "county [must make] a compelling case that …*basic county services*, including public safety, cannot be maintained." The Commission has defined "basic county services" as those services that are fundamental or essential:

> "Basic county services" means those services which are fundamental or essential. Such services shall include, but are not limited to, those services required by state or federal law, and may vary from county to county.[15]

In *Goff*, the court upheld the Commission's definition of "basic county services" and stated the following:

> Nothing in the statute limits "basic county services" to those mandated by law, or reflects a requirement that the same services be deemed 'basic' in every county in California. The regulation's clarification of this fact does

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[11] *Id.* at page 294.

[12] California Code of Regulations, title 2, section 1186.5, subdivision (c), see Attachment 5.

[13] California Civil Jury Instructions [BAJI] No. 2.62 (Jan. 2005 ed.).

[14] *Goff, supra,* 69 Cal.Rptr. at page 292.

[15] California Code of Regulations, title 2, section 1186.5, subdivision (d); see Attachment 5.

> not alter the meaning of section 17000.6, nor does it enlarge the Commission's power. Instead, it reflects reality. Some basic services, that is, services that are 'fundamental or essential,' may be mandated by state or federal law; others that are equally essential may not be subject of a governmental mandate. Similarly, what constitutes a basic service in one county may not be considered as such in another. It defies logic to suggest that rural and urban counties, for example, require identical basic services.[16]

The *Goff* court further clarified that each expenditure must be examined to determine whether it relates to a "basic county service". Whether sufficient funds from "nonbasic" services are available to cover shortfalls in basic services is a question of fact for the Commission to decide. Similarly, the amount of money spent on nonessential items must be considered.[17]

**D. Cannot Be Maintained**

Welfare and Institutions Code section 17000.6 states that the Commission "shall not make a finding of significant financial distress unless the county has made a compelling case that, absent, the finding, basic county services, including public safety, *cannot be maintained*." The Commission has defined "maintained" as "the level of service which the county must provide in order to adequately or effectively furnish basic county services."[18]

In past decisions, the Commission has clarified that the definition of "maintained" is broad and includes the possibility for a county to propose that it needed to *restore* or *expand* services and not simply to perpetuate a service level currently in place. The Commission determined that the broad definition of "maintained" makes good policy sense since the terms "basic", "fundamental" and "essential" are not static concepts in relation to government services or social needs. For example, caseload increases in a program may require additional funding in order to maintain existing service levels on a per-client basis. Or, new social needs may arise, such as a disease or public safety issue, requiring activities not previously contemplated, but still essential to the adequacy of a basic county service. Or, more simply, funding may have lagged behind existing program requirements long enough to erode service levels.

Therefore, the Commission has found that the county applicant may present both existing services that are threatened and the need for new services in support of its case for significant financial distress.

Finally, the Commission has noted that not all levels of activity within a basic county service might be deemed equally fundamental or essential. The county applicant, however, is still required to provide a compelling argument that the proposed service

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[16] *Goff, supra,* 69 Cal.Rptr. at page 292.

[17] *Id.* at page 293.

[18] California Code of Regulations, title 2, section 1186.5, subdivision (e); see Attachment 5.

level within the basic program is itself *fundamental* or *essential*, and truly necessary for the provision of *adequate* service.

The court in *Goff* upheld the Commission's definition of "maintained" and agreed that "maintained" should be interpreted broadly to include restoration or expansion of services if those services are fundamental or essential. The court agreed that "maintenance of basic county services" does *not* limit a county to services at the level currently in place:

> The fundamental question underlying this entire process is whether the county can afford to maintain basic county services. Whether those services have previously been funded is immaterial if the services are now essential.[19]

**E. Duration of a Finding of Significant Financial Distress**

If the Commission determines that the county has made a compelling case that its basic services, including public safety, cannot be maintained without reducing the general assistance standard of aid, the ultimate finding of significant financial distress can be made. The Commission must then determine the effective date and duration of that finding, for a period not to exceed 36 months.

[19] *Goff, supra,* 69 Cal.Rptr. at page 293.